May 16, 2001

D.T.E. 01-22

Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of a Second Restated Sixth Amendment to a Power Contract with Canal Electric Company for Seabrook Unit No. 1.

APPEARANCE: John Cope-Flanagan, Esq.

800 Boylston Street, 17th Floor

Boston, MA 02199

FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY and COMMONWEALTH ELECTRIC COMPANY

Petitioners

I. INTRODUCTION

On December 15, 2000, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (together, "Companies"), pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, filed a petition seeking Department of Telecommunications and Energy ("Department") approval of a second restated sixth amendment ("Amended Agreement") to a power purchase contract between Canal Electric Company ("Canal"), and the Companies ("Seabrook Power Contract").[(1)] The matter was docketed as D.T.E. 01-22.

On March 2, 2001, the Department requested comments concerning the Amended Agreement. There were no comments filed. The record consists of four Companies exhibits and four Department exhibits.[(2)]

II. THE AMENDED AGREEMENT

The Amended Agreement replaces and supercedes the restated sixth amendment ("Seabrook Buydown Agreement") to the Seabrook Power Contract approved by the Department in Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 99-89 (2000) (Exh. C-2, at 1). In D.T.E. 99-89, the Department, among other things, allowed the Companies' request to make a payment of $146,741,000 to buy down their embedded cost obligation to Canal with respect to purchasing electricity from Seabrook Unit No. 1. The Amended Agreement: (1) changes the effective date of the Seabrook Buydown Agreement from July 1, 2000 to November 1, 2000; (2) reduces the Seabrook Buydown Agreement amount from $146,741,000 to $141,600,000 ("Buydown Amount"); and

(3) eliminates a change in the definition of decommissioning expense (Exh. C-2, at 2-3).

The Companies stated that the funds for the Seabrook Buydown Agreement came from Energy Investment Services, Inc. ("EIS") (Exh. C-1, at 2).[(3)] The Companies stated that a portion of the EIS funds were disbursed during the pendency of the Department's review of the Seabrook Agreement in D.T.E. 99-89 (id.). As a result of this disbursement, the Companies indicated that the buydown payment of $146,741,000 approved in D.T.E. 99-89 needed to be adjusted (id.). To that end, the Companies stated that they have re-executed the Amended Agreement with Canal, updating the payment date to November 1, 2000 and reducing the buydown amount to $141,600,000 (id.). The Companies claimed that these changes still result in significant ratepayer savings of transition costs of $2,500,000 and $21,000,000 for Cambridge and Commonwealth customers, respectively (Exh. C-4).

The Companies stated that the Amended Agreement reinstates the definition of decommissioning expense that was contained in the Seabrook Power Contract in effect prior the Seabrook Buydown Agreement approved in D.T.E. 99-89 (Exh. C-1, at 2;

Exh. DTE 1-1, at 1). The Companies stated that the Seabrook Buydown Agreement approved in D.T.E. 99-89 changed the definition of decommissioning expense to a flexible, generic definition (Exh. DTE-1, at 1). However, the Companies noted that this definition of decommissioning expense did not comply with the requirements of the Federal Energy Regulatory Commission ("FERC"), which has jurisdiction over the Seabrook Power Contract as a wholesale power sales contract (Exh. C-1, at 2; Exh. DTE 1-1, at 1). The Companies stated that FERC requires that any changes in decommissioning expense must be reflected in a specific schedule of expenses (Exh. DTE-1-1, at 1). Consequently, the Companies reinstated the original definition and schedule of decommissioning expenses in the Seabrook Power Contract (id.). The Companies stated that any changes in the level of nuclear decommissioning expenses would not affect the Amended Agreement (Exh. DTE-1-2).

III. STANDARD OF REVIEW

The Department's regulations do not prohibit a company from negotiating a release from the obligations it has incurred, but such releases are subject to the Department's review.

Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Altresco-Lynn, Inc. and Altresco-Pittsfield L.P., D.P.U. 91-142 (1991); and Cambridge Electric Light Company and Commonwealth Electric Company, D.P.U. 91-153, at 15 (1991). The Department has also found that a buy-out of a Commonwealth contract with Lowell Cogeneration Limited Partnership was in the public interest. Commonwealth Electric Company,

D.T.E. 99-69 (1999). In Electric Industry Restructuring, D.P.U. 95-30, at 32-35 (1995), the Department recognized the amount by which the cost of existing contractual commitments for purchased power exceeds the competitive market price for generation as a cognizable component of stranded costs. That Order further stated that a reasonable opportunity to recover stranded costs would be in the public interest. The Act also allows for recovery of costs for existing contractual obligations for purchased power through the transition charge. G.L. c. 164, § 1G(b)(1)(iv). In D.T.E. 97-111, at 90, the Department found that the Companies' restructuring plan, which provided for the buy-out of above-market purchase power obligations, was consistent with or substantially complied with the Act.

G.L. c. 164, § 1.00 et seq., requires electric companies to seek to mitigate transition costs, including as one mitigation method the renegotiation of above-market PPAs.

G.L. c. 164, § 1G(d)(1)-(2). The Act further provides that if a negotiated contract buy-out is likely to achieve savings to ratepayers and is otherwise in the public interest, the Department is authorized to approve the recovery of the costs associated with the contract buy-out.

G.L. c. 164, § 1G(d)(2)(ii).

IV. ANALYSIS AND FINDINGS

The Department earlier found that, for the purposes of the Companies' inclusion of costs related to the Seabrook Buydown Agreement in their respective transition charges, the Seabrook Buydown Agreement would be treated as a purchase power agreement.

D.T.E. 99-89, at 9. In addition, the Department found that the Seabrook Buydown Agreement was in the public interest because it: (1) was consistent with applicable law; (2) would achieve substantial savings for ratepayers;[(4)] (3) would reduce the Companies' transition charges; and

(4) would have no adverse impacts on ratepayers. Id. at 10. The Department approved the Companies' use of EIS funds to make the buydown payments and allowed the Companies to include the Buydown Amount in the fixed portion of their transition charges, pending any necessary revision of this ratemaking treatment pursuant to their reconciliation proceedings. Id. at 11, 13.

The Amended Agreement adjusts the effective date of the transaction and reduces the Buydown Amount by $5,141,000 from the amount approved in D.T.E. 99-89. The

Department finds that the combined savings of $23.5 million in the instant case represents considerable savings to Cambridge and Commonwealth ratepayers. As such, the Department finds that the Amended Agreement is in the public interest.

With regard to the Companies' proposal to change the definition of decommissioning expense, the Amended Agreement reverts to the identical definition of decommissioning expense contained within the Seabrook Power Contract in effect prior to Department approval of the Seabrook Buydown Agreement in D.T.E. 99-89. The Department accepts this reinstatement, recognizing that the Companies are subject to FERC requirements on this issue.

V. ORDER

Accordingly, after due notice, opportunity for public comment, and consideration, it is hereby

ORDERED: That the Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval the Second Restated Sixth Amendment to a Power Contract with Canal Electric Company for Seabrook Unit No. 1 be and is hereby ALLOWED.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The Companies and Canal are parties to a life-of-the-unit purchase power agreement with Seabrook that the Companies anticipate will terminate in 2026. Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 99-89, at 1 (2000).

Commonwealth is entitled to 80.06 percent (approximately 32.5 megawatts ("MW")), and Cambridge is entitled to 19.94 percent (approximately eight MW) of the capacity and related energy produced by that portion of Seabrook owned by Canal (approximately 40.5 MW). Id.

2. The following exhibits are moved into the record of this proceeding: (1) the Companies' Petition (Exh. C-1); (2) a copy of the Amended Agreement (Exh. C-2);

(3) a schedule of the funding of the proposed buydown (Exh. C-3); (4) an economic analysis supporting the savings resulting from the proposed buydown (Exh. C-4); and (5) the Companies' responses to Department information requests Exhs. DTE-1-1 through DTE-1-4.

3. EIS is a special purpose affiliate of the Companies whose establishment was approved by the Department in Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 98-78/83-A (1998). EIS was established to hold and manage the net proceeds from the sale of Canal's electric generating facilities (Exh. C-1, at 2). The Department approved the Companies' use of EIS funds to fund the Seabrook Buydown Agreement. D.T.E. 99-89, at 10-11.

4. The Department found that Commonwealth's ratepayers would save approximately $22.3 million and Cambridge's ratepayers would save approximately $2.5 million in transition costs, on a present value basis. D.T.E. 99-89, at 9.